

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Plitt, Segall and Sons, Inc.	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Corporation Tax	:	
under Article 27 of the Tax Law for the f/y/e	:	
11/30/75.	:	

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Plitt, Segall and Sons, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Plitt, Segall and Sons, Inc.
137 W. 37th St.
New York, NY 10018

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
20th day of December, 1983.

David Parchuck

James P. Highland
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Plitt, Segall and Sons, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Tax :
under Article 27 of the Tax Law for the f/y/e :
11/30/75. :
_____ :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Manning Begler, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Manning Begler
Begler & Begler
570 Seventh Ave.
New York, NY 10018

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
20th day of December, 1983.

David Parchuck

Conrad A. Hagedorn
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 20, 1983

Plitt, Segall and Sons, Inc.
137 W. 37th St.
New York, NY 10018

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Manning Begler
Begler & Begler
570 Seventh Ave.
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PLITT, SEGALL & SONS, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 27 of the Tax Law for the Fiscal Year	:	
Ended November 30, 1975.	:	

Petitioner, Plitt, Segall & Sons, Inc., 137 West 37th Street, New York, New York 10018, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 27 of the Tax Law for the fiscal year ended November 30, 1975 (File No. 31792).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1983 at at 9:15 A.M., with all briefs to be submitted by June 27, 1983. Petitioner appeared by Begler and Begler (Manning Begler, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner's failure to pay the tax shown due on its corporation franchise tax report was due to reasonable cause and not willful neglect.

FINDINGS OF FACT

1. Petitioner filed a New York State Corporation Franchise Tax Report for the fiscal year ended November 30, 1974. On this report, petitioner declared that it was entitled to a refund of \$1,812.00.

2. Petitioner filed a New York State Corporation Franchise Tax Report for the fiscal year ended November 30, 1975. Petitioner reported a tax due of \$5,734.00, plus a first installment for the next period of \$1,434.00, for a total of \$7,168.00. Petitioner subtracted from this total a credit carryforward of \$679.00 and the refund sought on the prior year's return which, as of the date of the filing of the 1975 report, had not been paid. Therefore, petitioner remitted \$4,677.00.

3. On January 21, 1977, petitioner received the refund it requested on the report for the period ended November 30, 1974, plus interest. Petitioner retained the refund check.

4. On September 26, 1979, the Audit Division issued a Notice and Demand for Payment of Corporation Tax Due for the period ended November 30, 1975. The Notice assessed a tax due of \$5,734.00, plus penalty of \$407.70 and interest of \$565.49, for a total due of \$6,707.19. The total amount due, however, was reduced by giving petitioner the benefit of prior amounts paid of \$3,922.00,¹ resulting in a balance due of \$2,785.19. The Notice was issued to petitioner because of a failure to pay the amount of tax shown on its corporation franchise tax report for the period ended November 30, 1975. The penalty was imposed pursuant to section 1085(a)(2) of the Tax Law for failure to pay the amount shown as tax on a return required to be filed.

5. On March 20, 1980 and October 14, 1980, the Audit Division issued further notices to petitioner. Each notice assessed the same amount as that

¹ The amount of prior payments was determined by adding together the remittance with the report for 1975 of \$4,677.00, plus the credit carryforward of \$679.00 and then subtracting the amount due for the first installment for the next period of \$1,434.00.

assessed in the prior notice except that there were additional amounts assessed for penalty and interest because of the added time that the asserted deficiencies had been outstanding.

6. Prior to the hearing, petitioner agreed to pay the tax due plus interest. However, petitioner continues to assert that the penalty is unwarranted.

7. It was petitioner's practice to have its accountants prepare the corporation franchise tax reports. The officers of the corporation would then sign the report.

8. At the hearing, petitioner's representative argued that the refund check was retained by the comptroller of the corporation because the comptroller did not know that petitioner's accountant had claimed it on the corporation franchise tax report for 1975. Petitioner's representative also argued that petitioner had a net worth of over \$500,000.00 and the failure to remit \$1,812.00 does not indicate any willful failure to pay tax. Lastly, petitioner argued that there were a series of errors on the part of petitioner and the Audit Division and that, under the circumstances, there was no willful failure to pay any amount due.

CONCLUSIONS OF LAW

A. That, in general, section 1085(a)(2) of the Tax Law provides for the imposition of a civil penalty when there is a failure to pay the amount shown as due on a tax return which is required to be filed on or before the prescribed date, unless it is shown that the failure to pay the amount shown as due arose from reasonable cause and not willful neglect.

B. That sections 1087 and 1089(c) of the Tax Law set forth a procedure to utilize in a situation where there is an overpayment of tax. Rather than utilize its statutory remedy, however, petitioner chose to engage in the unauthorized procedure of claiming a credit for an overpayment reported in a

prior period. The claiming of such a credit does not constitute reasonable cause for failure to pay an amount shown as due on a return required to be filed.

C. That the petition of Plitt, Segall & Sons, Inc. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 20 1983

Rodina A. Chen
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER